IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 406 OF 2005

Dilip Sampati Aldar & anr. ... Appellants.
Versus.
Keshav Sampati Aldar & anr. ... Respondents.

Shri G.S.Godbole for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 13th April, 2005.

P.C.:

1. Heard Shri Godbole for the Appellants. He submitted that admittedly the original Defendant No.1 Sampati was survived by four daughters apart from the Appellant No.1 and the Respondent No.1 and the said daughters were necessary and proper parties to the suit for partition filed by the Respondent No.1. He, therefore, submitted that the decree for partition could not have been passed in the absence of the daughters.

2. The Courts below have found that the marriage between the deceased Sampati and the mother of the Appellant No.1 was not legal and valid. In fact the Appellate Court has recorded a finding that in view of the settled position of law, the Appellant No.1 will not get any right title or interest in the ancestral property held by the father Sampati. The trial Court has granted 1/3rd share to the Appellant No.1 and the Appellant No.2 in ancestral property held by Sampati.

The trial Court has recorded a finding that the Appellant No.1 and the Appellant No.2 are entitled to 1/3rd share on the basis of the sale deed executed by Sampati in favour of the Appellants during his life time.

3. There is a clear finding of fact that the Appellant No.1 will not be entitled to any share in the suit property which is an ancestral property held by the deceased. As the Appellants are not entitled to any share save and except the share granted by the trial Court on the basis of the sale deed, this Appeal cannot be entertained. If the daughters of Sampati are deprived of their legitimate share, it is for the said daughters to make a grievance in respect thereof.

4. As the Appellants have no right, title and interest save and except 1/3rd share granted by the trial Court on the basis of the sale deed executed by the father of the Appellant No.1, no case is made out for interference in the Second Appeal under section 100 of the Code of Civil Procedure, 1908. Hence the Second Appeal is dismissed with no order as to costs.

Judge.